## TENNESSEE REGULATORY AUTHORITY

### NASHVILLE, TENNESSEE

March 28, 2003

IN RE:		)	)			
ALLEGED VIOLATIONS OF TENN. CODE ANN. § 65-4-125(j), § 65-4-201, § 65-4-404, § 65-4-405, AND				DOCKET NO. 02-01244		
TENN COMP. R. & REGS 1220-4-257(2), 1220-4-1104		j	).			
AND 1220-4-1107 AGAINST BUSINESS OPTIONS, INC		J	)			

# ORDER APPROVING SETTLEMENT AGREEMENT

This matter came before Chairman Sara Kyle, Director Pat Miller and Director Ron Jones of the Tennessee Regulatory Authority ("Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on December 16, 2002, for consideration of a proposed Settlement Agreement ("Agreement") between the Consumer Services Division of the TRA ("CSD") and Business Options, Inc. ("Business Options") for violations of Tenn. Code Ann. §§ 65-4-125(j), 65-4-201, 65-4-404, 65-4-405 and Tenn. Comp. R. and Regs. 1220-4-11-.04 and 1220-4-11-.07. A copy of the Settlement Agreement is attached as Exhibit A.

Tenn. Code Ann. § 65-4-125(j) provides:

(j) By September 1, 2000, all telecommunications service providers subject to the control and jurisdiction of the Authority, except those owners or operators of public telephone service who pay annual inspection and supervision fees pursuant to § 65-4-301(b), or any telecommunications service provider that owns and operates equipment facilities in Tennessee with a value of more than five million dollars (\$5,000,000), shall file with the Authority a corporate surety bond or irrevocable letter of credit in the amount of twenty thousand dollars (\$20,000) to secure the payment of any monetary sanction imposed in any enforcement proceeding, brought under this title or the Consumer Telemarketing Protection

Act of 1990, compiled in title 47, chapter 18, part 15, by or on behalf of the Authority.

## Tenn. Code Ann. § 65-4-201(b) provides:

Except as exempted by provisions of state or federal law, no individual or entity shall offer or provide any individual or group of telecommunications services, or extend its territorial areas of operations without first obtaining from the Tennessee Regulatory Authority a certificate of convenience and necessity for such service or territory; provided, that no telecommunications services provider offering and providing a telecommunications service under the authority of the Authority on June 6, 1995, is required to obtain additional authority in order to continue to offer and provide such telecommunications services as it offers and provides as of June 6, 1995.

### TRA Rule 1220-4-2-.57(2) provides:

Resellers shall not provide intrastate telecommunications services in Tennessee without a certificate of convenience and necessity awarded by the Commission pursuant to state law and these rules. In determining whether or not to award a certificate, the Commission shall consider whether granting the certificate will service the present or future public convenience and necessity. The Commissioner may also consider the applicant's financial ability, character, and proposed rates, as well as such other matters as the Commission finds relevant.

Business Options was originally granted a Certificate of Public Convenience and Necessity ("CCN") to provide operator services and/or reseller of telecommunications services in the State of Tennessee by Order dated April 26, 1996 in Docket No. 96-00533. Upon determining that Business Options failed to submit a bond or letter of credit in accordance with Tenn. Code Ann. § 65-4-125(j), the Authority provided written notice of the bonding requirement to Business Options on three separate occasions: August 15, 2000, July 17, 2001 and February 11, 2002. At a regularly scheduled Authority Conference held on March 26, 2002, after proper notice to Business Options, the Directors voted unanimously to revoke Business Options' certificate to do business in the State of Tennessee.

On October 1, 2002, Business Options filed an application with the Authority requesting

recertification as a reseller of telecommunications services. The request was assigned Docket Number 02-01094. A voting panel consisting of Chairman Sara Kyle, Director Deborah Taylor Tate, and Director Pat Miller first considered the request at a regularly scheduled Authority Conference held on October 7, 2002, and granted Business Options a temporary CCN effective until December 9, 2002. Business Options had been operating without a CCN from March 26, 2002, the day its certificate was revoked, to October 7, 2002, when Business Options' CCN was temporarily approved. During the October 7, 2002 Conference, counsel for Business Options agreed to work with the Consumer Services Division of the Authority to resolve Business Options' violation of Tenn. Code Ann. § 65-4-201(b).

Business Options was also the subject of three complaints<sup>3</sup> regarding violations of Tenn. Code Ann. § 65-4-404 and TRA Rule 1220-4-11.07 (i.e., "Do-Not-Call Violations"). The Agreement between the CSD and Business Options also addresses these complaints.

Tenn. Code Ann. § 65-4-120 authorizes the TRA to impose a civil penalty of fifty dollars for each day of violation upon public utilities that have violated Authority rules or orders. Tenn. Code Ann. § 65-4-405 authorizes the TRA to impose a civil penalty of up to two thousand dollars for each "Do-Not-Call" violation. In negotiating the terms of the Agreement, the TRA's Consumer Services Division relied upon the factors stated in Tenn. Code Ann. § 65-4-116(b), including Business Options' size, financial status, the gravity of the alleged violations and the good faith demonstrated by Business Options' efforts to come into compliance with Authority rules and Tennessee law.

<sup>&</sup>lt;sup>1</sup> See In re: Petition of Business Options, Inc. for Authority to Provide Reseller Telecommunications Services in Tennessee, Docket No. 02-01094, Application for Certificate to Provide Operator Services and/or Resell Telecommunication Services in Tennessee, (October 1, 2002). Business Options supplemented this application with additional information requested by Authority Staff with a submission received by the TRA's Telecommunications Division on December 2, 2002.

<sup>&</sup>lt;sup>2</sup> The expiration date of this temporary CCN was extended until December 16, 2002 at the regularly scheduled Authority Conference held on December 2, 2002. A permanent CCN was granted to Business Options at the regularly scheduled Authority Conference held on December 16, 2002.

<sup>&</sup>lt;sup>3</sup> Consumer Services Division File Nos. 01-0470, 01-00506, and 01-00539.

At a regularly scheduled Authority Conference held on December 16, 2002, the voting panel assigned to this Docket considered the Agreement attached as Exhibit A. Mr. William Brzycki, Esq. appeared at the Conference on behalf of Business Options by telephone.

The terms of the Agreement require Business Options to pay the Authority the sum of \$13,650.00 no later than thirty days after Authority approval of the Agreement as well as comply with all provisions of Tennessee law and all Authority rules. Following a review of the Agreement, the Directors voted unanimously to accept and approve the Agreement.

### IT IS THEREFORE ORDERED THAT:

- 1. The Settlement Agreement, attached as <u>Exhibit A</u>, is accepted and approved and is incorporated into this Order as if fully written herein.
- 2. The sum of \$13,650.00 shall be paid to the Office of the Chairman of the Authority no later than thirty days after Authority approval of the Settlement Agreement.
- 3. Upon payment of the amount of \$13,650.00, Business Options is excused from further proceedings in this matter, provided that, in the event of any failure on the part of Business Options to comply with the terms and conditions of the Settlement Agreement, the Authority reserves the right to re-open this docket.

Sara Kyle, Chairman

Pat Miller, Director

on Jones, Directo

#### BEFORE THE TENNESSEE REGULATORY AUTHORITY

### NASHVILLE, TENNESSEE

IN RE:	)	
STAFF INVESTIGATION OF	)	
BUSINESS OPTIONS, INC.	)	DOCKET NO. 02-01244
FOR ALLEGED VIOLATIONS OF	)	
TENN. CODE ANN. § 65-4-125(j),	)	
§ 65-4-201, § 65-4-404, § 65-4-405,	)	
AND TENN. COMP. R. & REGS.	)	
1220-4-257(2), 1220-4-11.04, AND	)	
1220-4-11.07.	)	

#### SETTLEMENT AGREEMENT

This Settlement Agreement, which has been voluntarily entered into between the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("TRA" or "Authority") and Business Options International, Inc. ("Business Options" or the "Company"), resolves all issues presented by Business Options' alleged noncompliance with Tenn. Code Ann. § 65-4-125 (i.e., failure to provide a surety bond), Tenn. Code Ann § 65-4-201 (i.e., operating without a certificate of public convenience and necessity), Tenn. Code Ann § 65-4-404 (i.e., calling to persons objecting to solicitation), Tenn. Code Ann. § 65-4-405 (i.e., failure to register as a telephone solicitor), Tenn. Comp. R. & Regs. 1220-4-2-.57(2) (i.e., operating without a certificate), Tenn. Comp. R. & Regs. 1220-4-11.04 (i.e., failure to register as a telephone solicitor), and 1220-4-11.07 (i.e., violation of the Do-Not-Call Register) through the date of the execution of this Settlement Agreement. This Settlement Agreement pertains to any and all causes of action arising up to and including the date of approval of this Settlement which allege that Business Options violated Tenn. Code Ann. §§ 65-4-125(j), 65-4-201, 65-4-404, and 65-4-405 as well as their concomitant regulations, Tenn. Comp. R. & Regs. 1220-4-2-.57(2), 1220-4-11.04, and 1220-4-11.07 ("alleged violations").

This Settlement Agreement is subject to the approval of the Directors of the TRA. Upon



approval by the Directors of the TRA, and upon full payment of the Settlement Payment in accordance with Section 1 hereof and compliance with the terms of this Settlement Agreement, this Settlement Agreement shall be deemed a full settlement, release, accord and satisfaction of all liability for the alleged violations.

Tenn. Code Ann. § 65-4-125(j), requires telephone service providers, except owners or operators of public telephone service who pay annual inspection and supervision fees pursuant to Tenn. Code Ann. § 65-4-301(b) or telecommunications service providers that own and operate equipment facilities in Tennessee with a value of more than five million dollars, to file with the Authority a surety bond or letter of credit in the amount of twenty thousand dollars (\$20,000). On March 28, 2002 the Authority entered an order revoking the Company's authority to operate in Tennessee for failure to comply with Tennessee Code Annotated § 65-4-125. Business Options was not in compliance with Tenn. Code Ann. 65-4-125 from September 1, 2000 through September 30, 2002.

Tennessee Code Annotated § 65-4-201(b), prohibits individuals and entities from offering or providing telecommunications services without first obtaining from the Authority a certificate of convenience and necessity. Authority Rule 1220-4-2-.57(2) provides that resellers shall not provide intrastate telecommunications services in Tennessee without a certificate of convenience and necessity awarded by the Authority. Business Options operated without a certificate from March 28, 2002 through October 6, 2002 in violation of Tenn. Code Ann. § 65-4-201 and TRA Rule 1220-4-2.57(2).

On October 1, 2002 Business Options filed an application to resell telecommunications services in Tennessee--that application is currently pending a decision before the Authority. On October 4, 2002, the Company filed a Petition seeking a temporary certificate to operate in Tennessee pending Authority approval of a formal application so as prevent disconnection of its customers while Business Options took the steps necessary to comply with Tennessee law and Authority rules. At a regularly scheduled conference held on October 7, 2002, the Authority granted Business Options a temporary certificate which expires on December 9, 2002.

A current investigation by Authority Staff indicates that Business Options has failed to properly register with the Authority prior to engaging in the solicitation of Tennessee residential telephone subscribers in violation of Tenn. Code Ann. § 65-4-405 and TRA Rule 1220-4-11.04. Business Options is also the subject of three (3) complaints<sup>1</sup> regarding violations of Tenn. Code Ann. § 65-4-404 and TRA Rule 1220-4-11.07 (i.e., "Do Not Call Violations").

In negotiating this Settlement Agreement, CSD relied upon the factors stated in Tenn. Code Ann. § 65-4-116(b), including the Company's size, financial status, good faith, and the gravity of the violations.

In an effort to resolve all alleged violations noted in this Settlement Agreement CSD and Business Options agree to settle this matter based upon the following acknowledgements and terms, subject to approval by the Directors of the TRA:

- 1. Business Options agrees to pay the TRA thirteen thousand six hundred fifty dollars (\$13,650.00) (the "Settlement Payment") in settlement of all alleged violations included in this Settlement Agreement. Business Options shall remit the Settlement Payment to the Office of the Chairman of the TRA no later than thirty days after TRA approval of this Settlement Agreement. Upon completion of the Settlement Payment and compliance with the other terms and conditions of this Settlement Agreement, Business Options shall be excused from further proceedings in this matter.
- 2. In the event that Business Options merges or consolidates with or transfers its assets to another firm, corporation or entity, Business Options or its successor shall remain responsible for fully complying with the terms and conditions of the Settlement Agreement. Business Options shall so notify the CSD no later than ten (10) days prior to the completion of such transaction.
- 3. Business Options agrees to comply with all provisions of the Tennessee laws and Authority rules requiring a certificate of public convenience and necessity and the filing of a surety bond or letter of credit with the Authority.
- 4. Business Options agrees that a company representative will attend the Authority Conference during which the Directors consider this

<sup>&</sup>lt;sup>1</sup> The complaints were registered by Sherry Huff (CSD file no. 01-0470), Lillian Lang (CSD file no. 01-00506) and Gail Rice (CSD file no. 01-00539).

Settlement Agreement. Such attendance may be by telephone.

- 5. In the event that Business Options fails to comply with the terms and conditions of this Settlement Agreement, the Authority reserves the right to re-open this docket.
- 6. If the Tennessee Regulatory Authority does not rescind Business Options revocation of its Certificate of Public Necessity and Convenience and/or reinstate Business Options Certificate of Public Necessity and Convenience upon Business Options updating its application to resell telecommunications services and securing a \$20,000 Letter of Credit within the TRA guidelines, Business Options shall not be liable for the Settlement Payment.

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Eddie Roberson				
Chief, Consumer Services Division				
Tennessee Regulatory Authority				
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Print Name				
President				
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11-27-2002				
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